

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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PREMIER FLORIDA AUTO SALES AND  
LEASING, LLC,

Plaintiff,

-against-

**ORDER**

10 CV 4428 (DRH) (WDW)

MERCEDES-BENZ OF MASSAPEQUA, LLC,

Defendant.

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**HURLEY, Senior District Judge:**

On October 10, 2012, Mercedes-Benz of Massapequa, LLC, moved to dismiss Premier Florida Auto Sales and Leasing, LLC's complaint pursuant to Federal Rules of Civil Procedure 41(b) and 37, and for default judgment on its counterclaims pursuant to Federal Rule of Civil Procedure 55. (*See* Docket No. 28.) On October 23, 2012, this matter was referred to Magistrate Judge William D. Wall to issue a report and recommendation as to whether plaintiff's complaint should be dismissed and whether defendant has demonstrated that the allegations in the counterclaims establish the plaintiff's liability such that the motion for default should be granted, and if so, to determine the appropriate amount of damages, costs, and/or fees, if any, to be awarded. On November 5, 2012, Judge Wall issued a Report and Recommendation which recommended that both the complaint be dismissed and that default judgment on the counterclaims be entered, with damages to be determined at an inquest. (*See* Docket No. 31 ("R&R").) In connection with the motion for default judgment, Judge Wall specifically recommended that defendant "be given an opportunity to establish the viability of its claims as set forth in the Counterclaim Complaint, and to specify and support the damages sought." (R&R at 4.) On November 20, 2012, plaintiff was served with a copy of the Report and

Recommendation. (*See* Docket No. 32.) More than fourteen days have elapsed since the Report and Recommendation was served and to date, plaintiff has not filed any objections.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the Report and Recommendation for clear error, and finding none, now concurs in both its reasoning and its result. As such, the Court adopts Judge Wall's November 5, 2012 Report and Recommendation as if set forth herein, and dismisses plaintiff's complaint pursuant to Fed. R. Civ P. 41(b). In addition, the Court notes Premier Florida Auto Sales and Leasing, LLC's default and enters default judgment in favor of Mercedes-Benz of Massapequa, LLC, the amount to be determined at an inquest. In this regard, the matter is respectfully referred to Magistrate Judge William D. Wall to issue a report and recommendation with respect to the relief to be awarded. The defendant is directed to serve a copy of this Order on plaintiff forthwith and to file proof of service with the Court.

**SO ORDERED.**

Dated: Central Islip, New York  
February 14, 2013

/s/  
Denis R. Hurley  
United States District Judge